HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 27016 OF 2006

Between:

Ramaraja Nagar Residents Welfare Association,
Rep. By its President M. Sri Ram,
Jeedimetla Village, R.R.District.

..... Petitioner

AND

The Commissioner,
Qutbullapur Municipality,
Qutbullapur, R.R. District & others.

.....Respondents

:: O R D E R ::

Counsel for the petitioner : Shri C.M.R. Velu

Dated: 28.12.2006

Per G.S.SINGHVI, CJ

The petitioner association which appears to have been formed and got registered in the year 2006 solely for the purpose of litigating in the matter of the alleged illegal constructions made by respondent No.3 – M/s Maytas Housing Private Limited in Survey Nos. 73 and 75 of Jeedimetla Village, Qutbullapur Mandal and Municipality, Ranga Reddy District, filed suit for perpetual injunction some time after April 2006 along with an application for temporary injunction, but failed to persuade Junior Civil Judge, Medchal to entertain its prayer for restraining respondent No.3 from completing the construction of the building and this is the reason why it has chosen to invoke jurisdiction of this Court under Article 226 of the Constitution of India for grant of a declaration that action of respondent Nos. 1 and 2 in not containing the unauthorized construction made by respondent Nos. 3 to 5 on the land in question is arbitrary, illegal and violative of municipal laws and also for issue of a mandamus to the official respondents to demolish the illegal structures allegedly raised by respondent No.3.

Shri C.M.R. Velu, learned counsel for the petitioner made strenuous efforts to persuade us to entertain the writ petition by arguing that the issue raised by his client is of

vital importance to the people living in Rama Raja Nagar, Jeedimetla Village who have been deprived of basic amenities including the right to use public road on account of illegal structures being raised by respondent No.3. He submitted that suit filed by the Secretary of the petitioner association, which was registered as O.S.No.404 of 2006, has been withdrawn and, therefore, the same cannot operate as an impediment to the entertaining of writ petition under Article 226 of the Constitution of India. Learned counsel emphasized that respondent No.3 has been making illegal construction for last more than seven years and despite repeated representations, the officers of Qutbullapur Municipality and Hyderabad Urban Development Authority have not taken corrective and remedial measures.

We have given serious thought to the arguments of the learned counsel, but have not felt impressed and persuaded to entertain the writ petition. A perusal of the affidavit filed by Shri M. Sri Ram, who has described himself as President of the petitioner association, shows that not only the petitioner but respondent Nos.3 to 5 have been litigating with the authorities of the municipality and Hyderabad Urban Development Authority in the matter of the disputed construction. According to Shri M. Sri Ram, after purchasing Acs.8.29 guntas of land in Survey Nos.

73 and 75 situated in Jeedimetla Village, Qutbullapur Mandal and Municipality, respondent Nos. 4 and 5 have raised construction through respondent No.3 in violation of the sanctioned building plan and for this purpose, they filed O.S.No.121 of 2005 in the Court of Junior Civil Judge, Medchal and respondent No.3 filed O.S.No.439 of 2005 in the Court of Principal Senior Civil Judge, Ranga Reddy District. In both the cases, the plaintiffs succeeded in obtaining interim injunctions and continued unauthorised construction. In paragraph 10, the deponent has averred that the fire and emergency service department issued notice dated 19.04.2006 to respondent No.3, but no further action has been taken. In paragraph 11, he has detailed the violation of the sanctioned plan and averred that the Court may direct the official respondents to demolish the unauthorised constructions.

In our opinion, the writ petition is liable to be dismissed for more than one grounds, which are enumerated hereunder:

(i) the averments contained in paragraph 12 of the affidavit of Shri M. Sri Ram nowhere shows that O.S.No.404 of 2006 instituted by the Secretary of the petitioner association has been withdrawn. However, even if we were to accept and rely on the oral statement made by the learned counsel that the suit has been withdrawn, we do not find

any valid ground or justification to entertain the writ petition and adjudicate contentious issues of facts which can appropriately be adjudicated by a civil Court on the basis of evidence produced by the parties;

(ii) as per the petitioner's own showing, the disputed construction is going on for last several years. If the averments contained in the affidavit of Shri M. Sri Ram are read as a whole, it becomes clear that the construction activity undertaken by respondent No.3 is going on for last almost fifteen years. The averments contained in paragraph 11 (j) of the writ petition shows that the flats constructed by respondent No.3 are occupied by large number of persons. If that was true, it is not possible to fathom any tangible reason why the members of the petitioner association kept quiet and woke up from slumber after long lapse of time;

(iii) if an order is passed by the Court at this stage for demolition of the alleged illegal construction made by respondent No.3, the owners/occupants of the flats are bound to be adversely affected and as none of them has been impleaded as party to the writ petition, there is no justification for issue of a direction to respondent Nos. 1 and 2 to

demolish the so-called illegal construction.

The writ petition is dismissed in the manner indicated above.

As a sequel to dismissal of the writ petition, W.P.M.P.Nos. 34710 and 34711 of 2006 filed by the petitioner are dismissed.

G.S.SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

28.12.2006
ksld